

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM HARDY,  
Plaintiff

v.

HARLEY LAPPIN, *et al.*,  
Defendants

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: CRIMINAL NO. 1:11-CR-0457  
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*O R D E R*

We are considering the Report and Recommendation of Magistrate Judge Smyser. The plaintiff has filed objections to the report and requests the appointment of counsel. He is a federal inmate proceeding pro se and has filed a complaint for damages arising from medical treatment of a tumor on his leg.

Judge Smyser's report sets forth in detail the demanding legal requirements for an eighth amendment claim involving medical care and treatment. As noted by Judge Smyser, a plaintiff must show that a defendant was "deliberately indifferent" to his need for medical treatment. We agree with Judge Smyser that plaintiff has stated at most a claim for negligence or malpractice. The actions of prison and medical personnel in this case do not rise to the level of deliberate indifference, as outlined in Judge Smyser's thorough report. Plaintiff's objections to the report merely restate the allegations of his complaint and form no basis to reject the report.

Pursuant to the recommendation of Judge Smyser it is ordered that plaintiff's amended complaint is dismissed pursuant to 28 U.S.C. § 1915A(b)(1). Plaintiff's motion for appointment of counsel is denied. The Clerk shall close this file.

/s/William W. Caldwell  
William W. Caldwell  
United States District Judge